

Assembly Bill No. 1015

CHAPTER 820

An act to amend Section 98.6 of the Labor Code, relating to employment.

[Approved by Governor October 12, 2001. Filed
with Secretary of State October 13, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1015, Wright. Employment: retaliation.

Existing law prohibits an employer from discriminating against any employee because the employee has filed a claim with or instituted a proceeding before the Labor Commissioner relating to the employee's rights, because the employee testifies or will testify in such a proceeding, or because the employee exercised, on behalf of himself, herself, or others, rights afforded employees by the Labor Code. Existing law provides for reinstatement of and the payment of lost wages and work benefits to any employee who is subjected to adverse employment action because the employee filed a bona fide complaint with the Division of Industrial Relations. Existing law makes it a misdemeanor for an employer to take adverse employment action against employees who file bona fide complaints.

This bill would extend those provisions to apply to applicants for employment who are refused employment, not selected for a training program leading to employment, or discriminated against in any other manner. The bill would also expand existing prohibitions to include protection for employees and applicants who engage in conduct delineated in Chapter 4 of Division 1 and Chapter 5 of Part 3 of Division 2 of the Labor Code. The bill would provide that its provisions relating to Chapter 4 of Division 1 and Chapter 5 of Part 3 of Division 2 do not apply to state and local law enforcement agencies, certain religious organizations or corporations, or certain members of the press.

The bill would also provide that its provisions shall not be construed to invalidate certain collective bargaining agreements and employment contracts that protect an employer against conduct that is in direct conflict with the employer's essential enterprise-related interests where breach of the agreement would materially and substantially interfere with the employer's operations or collective bargaining agreements protecting a firefighter against diseases presumed to arise as a result of his or her employment by limiting the firefighter's consumption of tobacco products. The bill would provide that its provisions do not affect

existing law regarding employment discrimination related to the consumption of tobacco products.

The bill would provide that its provisions are severable and would also make technical, nonsubstantive changes to existing law.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that, absent the protections by the Labor Commissioner, working men and women are ill-equipped and unduly disadvantaged in any effort to assert their individual rights otherwise protected by the Labor Code. The Legislature finds it necessary and appropriate to provide employees an inexpensive administrative remedy for the pursuit of their rights under the Labor Code. The Legislature further declares that this act is necessary to further the state interest in protecting the rights of individual employees and job applicants who could not otherwise afford to protect themselves.

SEC. 2. Section 98.6 of the Labor Code is amended to read:

98.6. (a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, or has testified or is about to testify in any such proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration or hearing authorized by law, is guilty of a misdemeanor.



(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in paragraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following as specified in paragraphs (A) and (B):

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(f) This section does not affect in any way existing law regarding employment discrimination related to the consumption of tobacco products.

